FABER UNION SDN BHD.

v.

CHEW NYAT SHONG & ANOR.

SUPREME COURT, KUALA LUMPUR
TAN SRI DATO' HJ. MOHD EUSOFF B. CHIN CJ
TAN SRI DATO' EDGAR JOSEPH JR. FCJ
DATO' MOHD DZAIDDIN BIN HJ. ABDULLAH FCJ
[CIVIL APPEAL NO. 04-15-1993]
6 JANUARY 1995

LAND LAW: *Vacant possession of building - Date for delivery of vacant possession - Whether time started to run from the date the deposit was paid or from the date the sale and purchase agreement was signed.*

The issue that arose in this appeal was whether, in ascertaining the date of delivery of vacant possession of a building to be constructed, time started to run from the date payment of the booking fee was made or from the date of the signing of the sale and purchase agreement. The deposit was paid on 17 February 1984 and the agreement was signed on 27 June 1984.

Held:

Per Hj. Mohd Eusoff b. Chin CJ (delivering the judgment of the Court):

For the purpose of ascertaining the date of delivery of vacant possession the relevant date when time starts to run is the date on which the purchaser paid the booking fee and not the date of the signing of the sale and purchase agreement.

[Appeal dismissed with costs].

[**Bahasa Malaysia** Translation of Headnotes]

UNDANG-UNDANG TANAH: *Milikan kosong bangunan - Tarikh penyerahan milikan kosong - Samada masa bermula dari tarikh wang pendahuluan dibayar atau dari tarikh perjanjian jualbeli ditandatangani.*

Isu yang timbul dalam rayuan kepada Mahkamah adalah samada, dalam menentukan tarikh penyerahan milikan kosong bangunan yang akan dibina, masa bermula dari tarikh pembayaran wang pendahuluan dibuat atau dari tarikh perjanjian jualbeli ditandatangani. Wang pendahuluan telah dibayar pada 17 Februari 1984 dan perjanjian ditandatangani pada 27 Jun 1984.

Diputuskan:

Oleh Hj. Mohd Eusoff b. Chin KHN (menyampaikan keputusan Mahkamah):

Bagi tujuan menentukan tarikh penyerahan milikan kosong, tarikh relevan masa mula dikira adalah tarikh pembeli membayar fee taruhan dan bukannya tarikh perjanjian jualbeli ditandatangani.

[Rayuan ditolak dengan kos].

Case referred to:
Hoo See Sen and Anor.v. Public Bank Berhad [1988] 1 SCR 135 ***(foll)***

JUDGMENT

Hj. Mohd Eusoff Chin CJ:

When this appeal came before us on 6 January 1995 only one issue was argued and that is: for the purpose of ascertaining the date of delivery of the vacant possession in a claim of liquidated damages for late delivery of a building to be constructed, does time start running from the date of payment of the booking fee, or the date of the signing of the sale and purchase agreement which was executed after the payment of the booking fee.

The date the deposit was paid was 17 February 1984, and the agreement was signed on 27 June 1984.

Learned Counsel for the respondent told us that there was already a Supreme Court decision on this point, but could not produce to us a copy of the judgment. We then adjourned the case for decision pending the production of the earlier Supreme Court judgment.

The learned Counsel for the respondent has sent us the case which is *Hoo See Sen and Anor. v. Public Bank Berhad* [1988] 1 SCR 135. The facts there are similar to the ones before us. Clause 18 of the sale & purchase agreement in *Hoo See Sen* reads as follows:

> 18.(1) The said building shall be completed by the vendor and vacant possession delivered to the purchaser within twenty four (24) calender months **from the date** of this agreement.
>
> (2) If the vendor fails to deliver vacant possession of the said building in time the vendor shall pay immediately to the purchaser liquidated damages to be calculated from day to day at the rate of ten per centum (10%) per annum of the purchase price.

At page 137, it was held that for the purpose of ascertaining the date of delivery of vacant possession the relevant date when time starts to run is the date on which the purchaser paid the booking fee and not the date of the signing of the sale and purchase agreement.

Similarly, in the instant case, clause 6.06 of the sale and purchase agreement reads:

> the premises shall be completed by the vendor and vacant possession delivered to the purchaser within thirty six (36) calendar months **from the date of this agreement**. If the vendor fails to deliver vacant possession of the premises on time the vendor shall pay to the purchaser liquidated damages to be calculated from day to day at the rate of eight per cent (8%) per annum of the purchase price.

We find no good reason to disagree with the earlier decision of the Supreme Court.

We therefore dismiss this appeal with costs.